Supreme Court, U. S.
FILED
FEB 21 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-116

HALLEY I. THOMAS,
Petitioner

v.

WASHINGTON GAS LIGHT COMPANY,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR WASHINGTON GAS LIGHT COMPANY

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February 21, 1980

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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BRIEF FOR WASHINGTON GAS LIGHT COMPANY

CONSTITUTIONAL AND STATUTORY PROVISIONS

The following constitutional and statutory provisions are set forth in the appendix to this brief: U.S. Const., Art. IV, § 1; 28 U.S.C. §§ 1738-39; 33 U.S.C. §§ 913(a), 930(f); Act of March 4, 1927, ch. 509, § 3(a), 44 Stat. 1426; D.C. Code § 36-501 (1973); and Va. Code §§ 65.1-40, -54, -61, -93, -100, -103, and -104 (1968), as amended by 1970 Va. Acts, ch. 470.

QUESTIONS PRESENTED *

(1) Petitioner filed for workmen's compensation in the District of Columbia more than three and one-half years after the injury under a District of Columbia statute which has a general requirement that claims be filed in one year.

Was not Petitioner's claim filed too late?

(2) In 1971, when Petitioner was injured and awarded compensation in Virginia, District of Columbia law provided that workmen's compensation was not available in the District of Columbia if workmen's compensation could validly be provided by state law.

Was the District of Columbia statute available to Petitioner for the same injury?

(3) On March 15, 1971, Petitioner was granted a workmen's compensation award in Virginia that afforded all the benefits available under Virginia law and was enforceable in Virginia as a final award.

Is not that Virginia workmen's compensation award final for purposes of the Full Faith and Credit Clause?

(4) On September 24, 1974, Petitioner sought a second workmen's compensation award in the District of Columbia based on the same incident in Virginia.

Is not the Virginia award entitled to full faith and credit in the District of Columbia?

(5) 28 U.S.C. §§ 1738 and 1739 legislatively implement Article IV, Section 1, of the Constitution, which mandates that the legislative acts, the records and judicial

* The Court of Appeals did not consider Questions 1 and 2. They are argued as alternative grounds on which the judgment can be affirmed. See, *e.g.*, *Massachusetts Mut. Ins. Co.* v. *Ludwig*, 426 U.S. 479 (1976).

proceedings of any court, and nonjudicial records of any state shall have the same full faith and credit in every court within the United States as they have by law or usage in the courts of the state from which they are taken.

Is not a workmen's compensation award included within these provisions?

COUNTERSTATEMENT OF THE CASE

This case involves the lawfulness of an award under the workmen's compensation statute for the District of Columbia to an employee who had previously received an award for the same injury under the Virginia workmen's compensation statute.

Mr. Halley I. Thomas, a resident of the District of Columbia, began working for Washington Gas Light Company (WGL) in January 1970 (Appendix (App.) 36a).[1] Thomas injured his back while operating a jackhammer in Arlington, Virginia, on January 22, 1971 (App. 35a, 37a).[2]

WGL, a self-insured employer for purpose of workmen's compensation, moved promptly to provide Thomas with compensation under the workmen's compensation law of Virginia[3]—the location of the office out of which Thomas was working and the jurisdiction where the

[1] WGL is incorporated both in Virginia and in the District of Columbia. It engages in the purchase, distribution, and sale of natural gas at retail in the Washington metropolitan area, which includes the District of Columbia and adjoining areas of Virginia and Maryland, and it has employees working in all three jurisdictions.

[2] The date of injury is significant.

[3] Va. Code § 65.1-1 *et seq.* (1968), as amended by 1970 Va. Acts, ch. 470. In citing the Virginia Workmen's Compensation Act, we will cite the version in effect at the time of Thomas' injury. Subsequent amendments will be noted.

injury occurred (App. 37a). On February 5, 1971, Thomas and WGL executed a "memorandum of agreement as to payment of compensation" on a form provided by the Industrial Commission of Virginia. Under this agreement, Thomas has received $62 per week, payable from January 30, 1971, "until terminated in accordance with the provisions of the Workmen's Compensation Law of the State of Virginia" (App. 53a).

As required by Va. Code § 65.1-93 (1968), the agreement was submitted to the Industrial Commission for consideration. It was approved and an award was granted on March 15, 1971. The award stated that "in accordance with the provisions of" the Virginia Workmen's Compensation Act, the Commission was entering an award "as follows: $62.00 per week, during incapacity, payable weekly, beginning January 30, 1971. Medical benefits are awarded for the full statutory period" (App. 54a). WGL honored the award.

Thomas has never claimed that he was induced to seek an award of compensation in Virginia, rather than in the District of Columbia, by mistake, ignorance, fraud, or coercion. As a result, there is no evidence to support any charge of wrongdoing by WGL that might be lurking in the statement in Thomas' brief that "the employer seized on the fortuity of the injury occurring in Virginia and directed its employee to that forum to seek compensation" (Pet. Br. 22). Indeed, as will be developed below, there is an argument, which WGL believes to be persuasive, that, because Thomas could receive an award from Virginia, he was ineligible to receive compensation under the District of Columbia statute.

It was not until September 24, 1974—more than three and one-half years after the injury occurred and more than one year after Thomas retained counsel (App. 30a)—that Thomas filed a claim seeking compensation

for the same injury under the workmen's compensation statute of the District of Columbia. That statute, D.C. Code §§ 36-501 *et seq.* (1973), incorporates by reference the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.*[4] The District of Columbia's workmen's compensation program is administered by the Office of Workers' Compensation Programs of the U.S. Department of Labor.

A hearing was held before an administrative law judge on August 7, 1975. At the time of the hearing, Thomas was receiving compensation pursuant to the Virginia award. In addition, he was (and apparently still is) receiving disability payments under the Social Security Act (App. 38a).

On September 24, 1975, the administrative law judge filed an interlocutory decision and order rejecting WGL's contention that the Full Faith and Credit Clause of the U.S. Constitution precluded the District of Columbia from granting an award following Virginia's granting an award for the same injury (App. 34a). On March 4, 1976, a decision and order issued that found WGL liable to pay Thomas compensation for permanent total disability (App. 20a, 31a). Thomas' claim was found to be timely and, in addition, WGL was found liable to pay a 10 percent penalty on each installment which had been found to be due, but not paid within 14 days after it became due (App. 31a).[5]

Both WGL and Thomas sought review by the Labor Department's Benefits Review Board (see 33 U.S.C.

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[4] Unless otherwise indicated, citations to the United States Code are to the 1976 edition.

[5] WGL was also ordered to pay six percent interest on any overdue installment and to pay Thomas' attorney $1860 for his services (App. 31a-32a). It was held that WGL could deduct the amounts it had paid under the Virginia award from any compensation due under the District of Columbia award (App. 31a).

§ 921(b)). On October 20, 1976, that Board said that an unsatisfactory record precluded it from determining the timeliness of the claim (App. 16a-18a). After a hearing on remand, a supplemental decision held that Thomas' claim was timely and a 10 percent penalty was again imposed (App. 9a).

Upon WGL's second appeal, the Benefits Review Board affirmed the administrative judge's order on February 28, 1978 (App. 3a). In reliance on its own decision in *Pettus* v. *American Airlines, Inc.*, 6 B.R.B.S. 461, the Board ruled that the earlier Virginia award did not preclude a District of Columbia award (App. 6a).

The Board also ruled that Thomas' claim was timely even though it had not been filed within one year of injury as required by 33 U.S.C. § 913(a). The Board said that this statute of limitations had been tolled by 33 U.S.C. § 930(f), because WGL had not filed certain injury reports with the Department of Labor. WGL's argument that its filing of similar reports with Virginia constituted compliance was rejected (App. 6a).

The Board also upheld the imposition of a 10 percent penalty for failing to make compensation payments when due. The Board stated that 33 U.S.C. § 914(e) provided only limited grounds for excusing the penalty, and that WGL's payment of compensation pursuant to Virginia law was not one of them (App. 7a). Finally, the Board held that, on appeal, WGL could not raise Thomas' failure to provide the Department of Labor and the employer with notice of a compensable injury within 30 days of the injury as required by 33 U.S.C. § 912(a), when that issue had not been raised at the hearing (App. 8a).

As authorized by 33 U.S.C. § 921(c), WGL sought review in the United States Court of Appeals for the Fourth Circuit, the circuit in which the injury occurred.

The employer in *Pettus* v. *American Airlines, Inc.*, 6 B.R.B.S. 461, the case on which the Board had relied in denying WGL's Full Faith and Credit Clause contention, had also sought review in that court. On September 26, 1978, the Fourth Circuit issued an opinion in *Pettus* vacating the award under the District of Columbia statute (*Pettus* v. *American Airlines, Inc.*, 587 F.2d 627, *cert. denied*, 48 U.S.L.W. 3222 (Oct. 1, 1979) (No. 78-1739)). The court held that res judicata and the Full Faith and Credit Clause of the Constitution required that an earlier termination of claimant's award by the Virginia Industrial Commission be honored by the Benefits Review Board.

WGL thereupon moved for summary reversal, which the Court of Appeals granted, noting that the case was controlled by *Pettus* (App. 1a-2a). This Court's grant of certiorari followed.

SUMMARY OF ARGUMENT

I

There are two statutory grounds for denying Thomas' claim for compensation under the District of Columbia workmen's compensation law, which incorporates by reference the Longshoremen's and Harbor Workers' Compensation Act (LHWCA). (The Court of Appeals did not reach these questions because of its reliance on an earlier decision dealing with the Full Faith and Credit Clause issue.)

The first ground is that Thomas' claim was untimely made in that it was filed long after the LHWCA's one-year statute of limitations (33 U.S.C. § 913(a)) had expired. The Benefits Review Board held that this statute of limitations was tolled under 33 U.S.C. § 930(f), because WGL had not filed certain injury reports with the Department of Labor. But the tolling provision has

no application where an employer has submitted injury reports to an appropriate state agency and has paid compensation to the employee under a state workmen's compensation act. The tolling provision was added to the LHWCA in 1938, when it was thought that the LHWCA and state workmen's compensation laws were mutually exclusive. Consequently, the purpose of the tolling provision was to ensure that employees who could not receive state workmen's compensation would not be deprived of their right to receive compensation under the LHWCA by their employers' failure to file required reports. This purpose does not apply when the employee has already received compensation under a state workmen's compensation statute.

The Benefits Review Board's construction of the tolling provision not only goes beyond Congress' purpose in enacting it, but also leads to unjust results. Under the Board's view, the statute of limitations would be forever tolled so long as the employer had not physically filed reports with the Department of Labor. This construction of the statute leads to the revival of an untold number of claims that were settled years ago.

The second ground is that at the time Thomas was injured the LHWCA expressly forbade the granting of an award where compensation from a state workmen's compensation program could be validly had. A construction that effectuates this plain language creates no irreconcilable conflicts between the District of Columbia statute and the LHWCA, and is consistent with Congress' purpose in enacting the District of Columbia statute, which was to provide a compensation program for employees who currently had none. Since Thomas could—and did—receive compensation under Virginia's Workmen's Compensation Act, he is ineligible under the District of Columbia Act.

II

With regard to the issue arising under the Full Faith and Credit Clause, the Court of Appeals correctly held that *Magnolia Petroleum Co.* v. *Hunt*, 320 U.S. 430 (1943)—not *Industrial Commission* v. *McCartin*, 330 U.S. 622 (1947)—governs this case. In *Magnolia*, a Louisiana resident who was injured in Texas secured an award under the Texas workmen's compensation law, which under Texas law barred further relief. He then secured an award under the Louisiana workmen's compensation act. This Court held that the Louisiana award was barred by the Full Faith and Credit Clause, because Louisiana had to give the Texas award the same preclusive effect that it had in Texas. The Court held that a workmen's compensation claimant who secures an award that is final in the granting state is no different from a plaintiff in a tort or contract action who secures a judgment.

In *McCartin*, on the other hand, the employer and employee had inserted into a lump sum settlement agreement under the Illinois workmen's compensation statute a provision stating that an Illinois award would not affect the employee's right to seek an award in Wisconsin, and this agreement was incorporated into the award of the Illinois Industrial Commission. This Court, distinguishing *Magnolia*, held that the Full Faith and Credit Clause did not bar the Wisconsin award. The Court found nothing in the Illinois statute to preclude such an award, and found that the agreement allowing the Wisconsin claim to be prosecuted was of "decisive" significance (330 U.S. at 630).

The key question here is *not* whether Virginia intended to bar the District of Columbia from granting a successive award. The requirement that one examine whether the first state intended to preclude further awards elsewhere has its source in a statement in *McCartin*. But

by this statement, *McCartin*, in dictum, departed from the Full Faith and Credit Clause, the enabling statute, and this Court's prior decisions. They require that the effect that an award or judgment has *in the state that issued it* be given elsewhere. On its unique facts, *McCartin* was not wrongly decided, because there the employer had through the agreement waived any res judicata defense he might have in Wisconsin. But the erroneous dictum in *McCartin* should not be followed here. The District of Columbia must give the Virginia award the same effect that it has in Virginia.

The Virginia award was final under Virginia law. First, no significance attaches under Virginia law to the fact that Thomas' award was pursuant to a voluntary agreement rather than a contested award. Once an agreement is approved by the Virginia Industrial Commission—as the agreement between Thomas and WGL was—it has the identical effect as an award following a contest. Second, the claim that Thomas' Virginia award should not bar a District of Columbia award, because the Virginia award was for "temporary" disability and the District of Columbia award was for "permanent" disability must fail. The distinction between "permanent" and "temporary" total disability did not exist under Virginia law. Thomas received an award under a provision granting compensation for "total incapacity," and he was paid the maximum under Virginia law.

Even if one were to follow the language of *McCartin*, the Court of Appeals had an ample basis for construing Virginia law to bar successive awards for the same injury in other jurisdictions. The plain language of the Virginia Workmen's Compensation Act, which is fully supported by the decisions, makes it clear that that Act is intended to be the employee's exclusive remedy against his employer.

Finally, claims under the Virginia and District of Columbia workmen's compensation statutes do not constitute separate causes of action. *Magnolia* rejected this argument, and there is no reason to reach any different result here.

As an initial matter, while the Virginia Industrial Commission determines claims only under Virginia law, there is no constitutional reason why it could not, in appropriate cases, determine claims under District of Columbia law. In effect, Virginia has by statute determined the choice of governing law for the Virginia Industrial Commission.

A plaintiff who brings a wrongful death action in a state that applies a statute with a limit on damages cannot later bring a successful suit in another jurisdiction that will apply a wrongful death statute without a limitation. Full faith and credit bars the second suit. Thomas is no different from such a plaintiff, and attempts to distinguish a claimant for workmen's compensation from a plaintiff in tort and contract actions are not persuasive.

Certainly, policy interests do not justify such a distinction. It is doubtful at best to claim that a jurisdiction has a greater interest in seeing that workers get compensation than it has in seeing that persons injured by tort or breach of contract get full relief. In any event, this Court has found the Full Faith and Credit Clause to outweigh policy interests at least as substantial as those of a jurisdiction in granting workmen's compensation.

Nor does the opportunity that a plaintiff in a tort or contract action has to litigate choice of law issues furnish a basis for distinguishing workmen's compensation, either when viewed from the standpoint of interested states or from the standpoint of the litigants. With regard to the former, a forum state is not constitutionally com-

pelled to consider the interests of other states in choosing the governing law; it may apply its own law so long as its interests in a case do not fall below a constitutional minimum. As to the interests of the litigants, if any plaintiff ought to be able to relitigate a claim, it should be one who litigates and loses a choice of law question. Such a plaintiff might have reasonably thought that the first forum would apply a more favorable law than it in fact did. In contrast, a claimant for workmen's compensation can have no doubt as to what law an industrial commission will apply.

Finally, the suggestion that employers might "overreach" and seek to have employees agree to compensation in the least generous forum furnishes no basis to except workmen's compensation from the general rule on full faith and credit. The state that issues an award is fully capable of dealing with any employer overreaching. For instance, Virginia allows seasonably made petitions to vacate awards on the ground of fraud, imposition, or mistake. This Court long ago refused to carve out an exception under the Full Faith and Credit Clause for allegations that a judgment had been secured by fraud, and there is no reason to do so here.

ARGUMENT

I

UNDER DISTRICT OF COLUMBIA LAW, THOMAS IS NOT ENTITLED TO AN AWARD UNDER THE DISTRICT OF COLUMBIA WORKMEN'S COMPENSATION ACT.

On two separate statutory grounds, Thomas' claim for compensation should have been denied: (1) Thomas' claim for compensation under District of Columbia law was untimely made; and (2) under the District of Columbia's statute as it existed at the time Thomas was injured, the grant of a prior Virginia award barred a District of Columbia award.

Having already decided the Full Faith and Credit Clause issue in *Pettus* v. *American Airlines, Inc., supra* (587 F.2d 627), the Court of Appeals did not pass on these statutory grounds in setting aside Thomas' award of compensation. It is settled, however, that a respondent is expected "to urge any grounds which would lend support to the judgment below . . ." (*Dayton Board of Education* v. *Brinkman*, 433 U.S. 406 at 419 (1977)). Because these two statutory barriers do not raise constitutional issues, they should be considered first. See, *e.g.*, *New York City Transit Authority* v. *Beazer*, 440 U.S. 568 (1979).

A. Thomas Filed His Claim Too Late.

The District of Columbia workmen's compensation law incorporates by reference the Longshoremen's and Harbor Workers' Compensation Act (LHWCA),[6] and the LHWCA

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[6] D.C. Code § 36-501 provides:

"The provisions of chapter 18 of title 33, U.S. Code, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee of an em-

generally requires that an award of compensation under it "shall be barred unless a claim therefore is filed within one year after the injury or death" (33 U.S.C. § 913(a)).[7] Here, Thomas' claim was filed two and one-half years after the one-year deadline had passed, but the Benefits Review Board still overruled WGL's contention that the claim was untimely made.[8] Notwithstanding the lapse of

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ployer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term 'employer' shall be held to mean every person carrying on any employment in the District of Columbia, and the term 'employee' shall be held to mean every employee of any such person."

[7] In full, Section 913(a) provides:

"(a) Except as otherwise provided in this section, *the right* to compensation for disability or death *under this chapter shall be barred* unless a claim therefore *is filed within one year after the injury or death.* If payment of compensation has been made without an award on account of such injury or death, a claim may be filed within one year after the date of the last payment. Such claim shall be filed with the deputy commissioner in the compensation district in which such injury or death occurred. The time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment." (Emphasis added.)

The payment of compensation by WGL under the Virginia Workmen's Compensation Act cannot be considered "payment of compensation," which under this provision would toll the one year statute of limitations. "Compensation" is defined by the LHWCA as payment under that Act, not payment pursuant to an award under a state workmen's compensation act. 33 U.S.C. § 902(12). See *Marshall* v. *Pletz*, 317 U.S. 383 at 390-91 (1943); *Windrem* v. *Bethlehem Steel Corp.*, 293 F.Supp. 1 (D.N.J. 1968). But see *Great Lakes Dredge & Dock Co.* v. *Brown*, 47 F.2d 265 (N.D. Ill. 1930).

[8] Of course, statutes of limitation are based on sound policy: "The statute of limitations is a statute of repose, designed to protect the citizens from stale and vexatious claims, and to make an end to the possibility of litigation after the lapse of a reasonable time. It has long been regarded by this Court . . . as a meritorious defense, in itself serving a public interest" (*Guaranty Trust Co.* v. *United States*, 304 U.S. 126 at 136 (1938)).

time, the Board held that the statute of limitations was tolled by 33 U.S.C. § 930(f), under which the time limit of 33 U.S.C. § 913 "shall not begin to run against the claim of the injured employee . . ." until the employer shall have filed certain injury reports with the Department of Labor.[9] The Benefits Review Board found that Thomas' claim was not untimely on the ground that WGL had not physically filed these reports with the Department of Labor, even though WGL had filed similar reports with the Virginia Industrial Commission and had paid compensation under Virginia law (App. 6a-7a).

Here, "the basic inquiry is whether congressional purpose is effectuated by tolling the statute in given circumstances." *Burnett* v. *New York Cent. R. Co.*, 380 U.S. 424 at 427 (1965). The tolling provision of 33 U.S.C. § 930(f) was added to the LHWCA in 1938 (Act of June 25, 1938, ch. 685, § 11, 52 Stat. 1167). The reason given in the committee reports was that, in some instances, employees had been untimely in filing claims for compensation, because the employer had not filed the injury reports required by 33 U.S.C. § 930. "The purpose of this amendment is to remove any possible motive to withhold such reports of injury by making the bar of the limitation upon the right to file a claim begin to run only after such report of injury has been filed . . ." (H.R. Rep. No. 1945, 75th Cong., 3d Sess., at 9 (1938), quoted in S.Rep. No. 1988, 75th Cong., 3d Sess., at 9 (1938)).

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[9] 33 U.S.C. § 930(f) states:

"(f) Where the employer or the carrier has been given notice, or the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier has knowledge, of any injury or death of an employee and fails, neglects, or refuses to file report thereof as required by the provisions of subdivision (a) of this section, the limitations in subdivision (a) of section 913 of this title shall not begin to run against the claim of the injured employee or his dependents entitled to compensation, or in favor of either the employer or the carrier, until such report shall have been furnished as required by the provisions of subdivision (a) of this section."

It will be recalled, that in implementing this congressional purpose, Congress enacted this provision at a time when it was thought that the LHWCA and state workmen's compensation laws were mutually exclusive (see generally Gilmore & Black, *The Law of Admiralty* § 6-49 (2d ed. 1975)). Consequently, the congressional purpose behind 33 U.S.C. § 930(f) was to ensure that an employee receive compensation under the LHWCA in a situation where state workmen's compensation was not considered to be available.[10] This purpose does not apply when, as here, the employee received an award under a state workmen's compensation statute, and there is no reason to extend the tolling provision of 33 U.S.C. § 930 (f) to such a case.

The Benefit Review Board's interpretation of the statute is completely mechanistic, and easily lends itself to unjust results. The Board would find the statute of limitations to be forever tolled so long as the employer had not physically filed injury reports with the Department of Labor. This would be in spite of the fact that an employer had settled an employee's claim under another statute or that the employee had long and unreasonably delayed in filing his claim under the District of Columbia law. Under the Board's view, not only would such a claim be timely, but the employer would in addition be automatically liable for the 10 percent penalty imposed by 33 U.S.C. § 914(e). Thomas himself waited 45 months after his injury and 15 months after retaining counsel (App. 30a) before filing. On these facts, the Board's decision is arbitrary and at odds with any reasonable view of Congress' purpose in enacting the tolling provision.

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[10] In reaching a contrary result, the District of Columbia Circuit ignored this purpose in *Director* v. *National Van Lines, Inc.*, —— F.2d —— (No. 78-1259; D.C. Cir., Nov. 13, 1979).

B. When Thomas Was Injured in 1971, the District of Columbia Law Did Not Allow Compensation in the District of Columbia When Workmen's Compensation Was Available in a State.

At the time Thomas was injured in 1971, Section 3(a) of the LHWCA provided that compensation was payable only if (1) the injury occurred upon navigable waters and (2) if a recovery for the injury could not be had under state workmen's compensation laws:[11]

> "Compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and *if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law*" (Act of March 4, 1927, ch. 509, § 3(a), 44 Stat. 1426 (codified at 33 U.S.C. § 903(a) (1970)) (emphasis added)).

The plain language of this law provided that no recovery could be had in the District of Columbia if recovery could be "validly" had under a state's workmen's compensation program. Thomas has had a recovery under the Virginia Workmen's Compensation Act, and there is no reason to doubt the validity of that recovery. Since Thomas could, and did, receive an award from Virginia, he cannot receive an award under the District of Columbia law.

This is consistent with this Court's interpretation of the LHWCA. Whatever may have been the case for em-

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[11] This provision was substantially amended by the LHWCA Amendments of 1972, but the Amendments did not take effect until November 1972, long after Thomas' injury (Act of Oct. 27, 1972, Pub. L. No. 92-576, § 22, 86 Stat. 1265).

ployees injured on navigable waters,[12] compensation was not given under the LHWCA to employees who had suffered, as Thomas did, "injuries on land traditionally within the ambit of state compensation acts." *Nacirema Operating Co.* v. *Johnson*, 396 U.S. 212 at 221 (1969). Thomas was not injured on the water.

Moreover, the very purpose of Congress in adopting the District of Columbia workmen's compensation statute, was to provide compensation to employees who then had no compensation law:

> "Congress has long neglected the private employees in the District of Columbia. *They have no accident compensation law, no employers' liability statute. . . .*"
>
> * * * * *
>
> "The bill (S. 3565) would now extend the reasonable compensation protection of the Federal law of 1927 [the LHWCA] to other private employments in the District of Columbia" (S.Rep. No. 852, 70th Cong., 1st Sess., at 1-2 (1928) (emphasis added)).

Employees already eligible for compensation under state workmen's compensation laws had no need for this protection; they had not been "neglected." Furthermore, the "reasonable compensation protection" of the LHWCA was subject to the express condition that compensation under a state program not be available. There is no reason to believe that Congress did not intend to have this express condition apply to the District of Columbia law as well as to the LHWCA.[13]

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[12] See *Calbeck* v. *Travelers Ins. Co.*, 370 U.S. 114 (1962). See also *Shea* v. *Texas Employers' Ins. Ass'n*, 383 F.2d 16 (5th Cir. 1967) (holding that employee who had received state award cannot receive award under LHWCA).

[13] It was certainly reasonable for Congress in enacting the District of Columbia law to defer to existing state compensation programs, where available. For instance, in this particular case the difference in weekly payments to Thomas was small: $62 in Virginia versus $70 in the District of Columbia. See Va. Code § 65.1-54 (1968), as amended by 1970 Va. Acts, ch. 470; Act of July 14, 1961, Pub. L. No. 87-87, § 1, 75 Stat. 203 (codified at 33 U.S.C. § 906(b) (1970)). Virginia does, however, place a ceiling on payments for injuries such as that to Thomas' back ($24,800 or 500 weeks (Va. Code § 65.1-54, *supra*)). These differences are not of sufficient magnitude to make Congress' deference to Virginia's program irrational.

On this issue, *Travelers Ins. Co.* v. *Cardillo*, 141 F.2d 362 (D.C. Cir. 1944), which the Department of Labor cites in its brief as the "Federal Respondent" (DOL Br. 24 n.16), is wrong.[14] There, it was contended that an employee who could have been compensated in Maryland was not eligible for a District of Columbia award. The court said that it was "obvious" that Section 3(a) of the LHWCA has "no proper place in the District Act" and suggested that "the failure of Congress to expressly exclude it was perhaps due to inadvertence . . ." (141 F.2d at 364). The court held that the District of Columbia law "shows unmistakably the precise extent and the precise limitations of its jurisdiction and coverage, and these must be given effect, or else the whole purpose of the Act would be lost . . ." (*ibid.*). Of the conditions contained in Section 3(a) of the LHWCA that an injury occur on navigable waters and not be compensable under a state law, the court said (141 F.2d at 364):

> "To apply the limitations of the Section to the District of Columbia Act would destroy it, make it wholly inoperative and result in an absurdity. For

[14] WGL welcomes the participation here of the Department of Labor as an *amicus curiae*, but not as a party. Under the prevailing Fourth Circuit rule, the Department and its officers are not parties to actions seeking review of Benefits Review Board decisions (*ITO Corp.* v. *Benefits Review Board*, 542 F.2d 903 at 906-07 (4th Cir. en banc 1976)), and the Department did not participate in the proceedings below in the Court of Appeals. Accordingly, the Department of Labor is not a party under the terms of Rule 21(4), Supreme Court Rules.

> as to the navigable waters it would be a meaningless duplication, and as to the exclusion of injuries compensable under State laws, it would be in the teeth of the language of the local law extending its provisions to cases of injury or death, irrespective of the place where either occurred."

The requirement in Section 3(a) that an injury occur on navigable waters could not be applicable to the District of Columbia Act. Otherwise, the law would be a "meaningless duplication" of the LHWCA. As to this requirement, there was an irreconcilable conflict between the two statutes.

But there is no such conflict with regard to the requirement that an injury not be compensable under a state workmen's compensation law. Repeals by implication are not favored, and provisions in statutes should be harmonized where possible. See, *e.g.*, *Morton* v. *Mancari*, 417 U.S. 535 (1974). Here, the requirement in Section 3(a) regarding right of recovery under state law can be harmonized with the District of Columbia statute by simply understanding that Congress intended to allow recovery under the District of Columbia statute to employees of District of Columbia employers when recovery was not available under a state workmen's compensation law. This analysis is entirely consistent with the congressional desire, as expressed in the Senate report quoted above, to make compensation benefits available to employees who then had no protection.[15]

The very words of the statute show that Congress quite reasonably intended to provide compensation when injury occurred *outside* the District of Columbia, only when compensation was not available under the workmen's

[15] In at least one other instance, Congress has stated a desire to defer to state workmen's compensation laws. 42 U.S.C. § 1705, dealing with compensation for war hazards, states that no benefits under 42 U.S.C. § 1701 *et seq.* shall be granted if compensation for the same injury was granted under state law. See also note 31 *infra*.

compensation law of the jurisdiction where the injury occurred. So interpreted, there is no inconsistency between Section 3(a) of the LHWCA as it existed at the time Thomas was injured and the District of Columbia workmen's compensation law.

Accordingly, Thomas' award under the District of Columbia law should be set aside on the ground that his injury was compensable under Virginia law.[16]

II

THE FULL FAITH AND CREDIT CLAUSE MANDATES THAT A WORKMEN'S COMPENSATION AWARD WHICH IS FINAL IN VIRGINIA BE GIVEN THE SAME EFFECT IN THE DISTRICT OF COLUMBIA AS IT HAS IN VIRGINIA.

Our Constitution is explicit:

> "Full Faith and Credit shall be given in each State to the public acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof" (Article IV, Section 1).

The First Congress enacted a statute implementing this provision in 1790.[17] In its current form that statute provides that the "Acts of the legislature" and the "records and judicial proceedings of any court" of any state that are authenticated according to the statute "shall have the same full faith and credit in every court within the

[16] A ruling on the ground that Thomas was not entitled to a District of Columbia award would not affect prior final decisions granting awards, even though the employees in those cases might have been eligible for an award under a state law. 33 U.S.C. § 922 does not allow awards to be modified on the ground of mistake of law. See *O'Keeffe* v. *Aerojet-General Shipyards, Inc.*, 404 U.S. 254 at 256 (1971).

[17] Act of May 26, 1790, ch. 11, 1 Stat. 122.

United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken" (28 U.S.C. § 1738). Similar treatment is accorded the "nonjudicial records or books kept in any public office of any State, Territory, or Possession . . ." (28 U.S.C. § 1739).[18]

Problems under the Full Faith and Credit Clause usually arise in two contexts, the first involving choice of laws—whether a forum state must apply the law of a sister state—and the second involving the effect of judgments from sister states. With regard to choice of law, "[t]he Full Faith and Credit Clause does not compel a state to adopt any particular set of rules of conflict of laws; it merely sets certain minimum requirements which each state must observe when asked to apply the law of a sister state." *Wells* v. *Simonds Abrasive Co.*, 345 U.S. 514 at 516 (1953). The instant case does not involve a problem of choice of law.

Instead, this case involves the effect of a judgment, and when a forum state is asked to give effect to the judgment entered by the court of another state, the guiding rule, as stated over 160 years ago by Chief Justice Marshall, is that the forum state has no choice: "[T]he judgment of a state court should have the same credit, validity and effect, in every other court of the United States, which it had in the state where it was pronounced, and . . . whatever pleas would be good to a suit thereon in such state, and none others, could be pleaded in any other court in the United States." *Hampton* v. *McConnel*, 16 U.S. (3 Wheat.) 234 at 235 (1818). The continuing validity of this rule was noted in *Williams* v. *North Caro-*

[18] 28 U.S.C. §§ 1738 and 1739 are set forth *infra* in the appendix. The statutory reference to "every court" applies to federal courts —such as the Court of Appeals in this case—as well as to state courts. *Davis* v. *Davis*, 305 U.S. 32 (1938); *Mills* v. *Duryee*, 11 U.S. (7 Cranch) 481 (1813).

lina, 317 U.S. 287 at 294-95 (1942), and just last Term, the Court summarized the matter as follows: "A judgment entered in one State must be respected in another provided that the first State had jurisdiction over the parties and the subject matter." *Nevada* v. *Hall*, 440 U.S. 410 at 421 (1979).

Here, the question is whether the award granting workmen's compensation to Thomas in Virginia in 1971 is to be an exception to the rule on judgments. The decision of this Court most closely on point is *Magnolia Petroleum Co.* v. *Hunt*, 320 U.S. 430 (1943).

Hunt, a resident of Louisiana, was hired in Louisiana to work in the drilling of oil wells. During the course of employment he worked in Texas and was injured there. Under Texas law a workmen's compensation award constituted an employee's sole remedy, which, when final, was the equivalent of a court's judgment. Thus, an employee could not get a second award for the same injury, nor could he get an award from Texas if he had previously obtained an award from another state (320 U.S. at 435). Hunt secured an award under the Texas statute and then in Louisiana recovered compensation for the same injury under the Louisiana workmen's compensation law (320 U.S. at 433-34). This Court set aside the Louisiana award.[19]

The Court reasoned that, while a state is generally free to apply its own workmen's compensation law, the issue was not choice of law, but the effect of the Texas award under the Full Faith and Credit Clause. The Court pointed out that the Constitution makes "that which has been adjudicated in one state res judicata to the same extent in every other" (320 U.S. at 438), with the result that Louisiana is "deprived . . . of the power to deny that

[19] Note that the amounts awarded Hunt under the Texas law were deducted from the Louisiana award (320 U.S. at 434). This did not influence the result reached by the Court.

the Texas award has the same binding effect on the parties in Louisiana as it has in Texas" (320 U.S. at 440).

The Court said that any Louisiana policy interest in granting an award was overridden by the policy underlying the Full Faith and Credit Clause (320 U.S. at 440-41), and that it was not sufficient to say that the Louisiana claim was a separate cause of action because it arose under a different statute: "The grounds of recovery are the same in one state as in the other—the injury to the employee in the course of his employment. The whole tendency of our decisions under the full faith and credit clause is to require a plaintiff to try his whole cause of action and his whole case at one time" (320 U.S. at 444). In this regard, it made absolutely no difference that Louisiana authorized a higher recovery: "A judgment in tort or in contract is not immune from the requirement of full faith and credit because the successful plaintiff could have maintained his suit under the law of other states and have secured a larger recovery . . ." (320 U.S. at 445). The Court ruled that workmen's compensation awards did not stand on any different footing from other state judgments (320 U.S. at 446).[20]

[20] The Court disposed of the need for further semantic discussion (320 U.S. at 443):

> "Whether the proceeding before the State Industrial Accident Board in Texas be regarded as a 'judicial proceeding,' or its award is a 'record' within the meaning of the full faith credit clause and the Act of Congress, the result is the same. For judicial proceedings and records of the state are both required to have 'such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken.'"

This statement is still true under the current version of the implementing statute (28 U.S.C. §§ 1738-39). Accordingly, the Court need not decide whether the approval of the compensation agreement by the Virginia Industrial Commission constitutes a "judicial proceeding" or a "nonjudicial record . . . kept in any public office." The Constitution requires that each be entitled to full faith and credit.

In spite of the clear teachings of *Magnolia*, Thomas tries to rely on *McCartin*, decided in 1947.[21] The facts of that case are peculiar, perhaps unique. Both the employer and the employee were Illinois residents. The employee was injured on a building job in Wisconsin (330 U.S. at 623). He first filed in Wisconsin for a workmen's compensation award, but the employer and his insurance carrier objected to Wisconsin's jurisdiction. Consequently, the employee also filed a claim in Illinois. The Wisconsin Commission told the parties that the employee was free under Wisconsin law to prosecute the Illinois claim and then prosecute the Wisconsin claim, upon the understanding that any Illinois award would be credited against any Wisconsin award (330 U.S. at 624).

The parties next settled the Illinois claim with a lump sum agreement that expressly did "not affect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin." The Illinois Industrial Commission, following a hearing, approved the agreement, which "became 'in legal effect an award.'" (330 U.S. at 624-25, 628.)

The Wisconsin Industrial Commission then gave the employee a successive award. In reliance on the then recently decided *Magnolia* case, the Wisconsin Supreme Court set aside the Wisconsin award. This Court reversed.

Magnolia was distinguished on the ground that the Illinois award in *McCartin* was "different in its nature and effect from the Texas award in the *Magnolia* case" (330 U.S. at 627). Having distinguished *Magnolia*, the Court said: "[T]here is nothing in the [Illinois] statute

[21] *Industrial Commission* v. *McCartin*, 330 U.S. 622 (1947). Thomas and the Department of Labor emphasize that *McCartin* was unanimously decided, but this is how it should have been. While *Magnolia* involved a novel question of law, *McCartin* was needed to correct an obvious misapplication of *Magnolia* by the Wisconsin Supreme Court.

or in the decisions thereunder to indicate that it is completely exclusive, that it is designed to preclude any recovery by proceedings brought in another state for injuries received there in the course of an Illinois employment" (330 U.S. at 627-28). The Court pointedly added: "We need not rest our decision, however, solely upon the absence of any provision or construction of the Illinois Workmen's Compensation Act . . ." because *the award itself reserved the right* to prosecute the Wisconsin claim (330 U.S. at 628).

The contract between the parties had become "part of the Illinois award, an award which has achieved finality in the absence of a timely appeal." When the contractual reservation is read against the Illinois statute, "it becomes clear that the reservation spells out what we believe to be implicit in that Act—namely, that an Illinois workmen's compensation award of the type here involved does not foreclose an additional award under the laws of another state. And in the setting of this case, *that fact is of decisive significance*" (330 U.S. at 630) (emphasis added).

A. *McCartin* Does Not Alter the Mandate of the Constitution.

Thomas contends that the key question is whether Virginia intended to preclude the granting of a further award by the District of Columbia (Pet. Br. 11-17; see also DOL Br. 11-22). He relies on the passage in *McCartin* where the Court said (330 U.S. at 627-28):

> "[T]here is nothing in the [Illinois] statute or in the decisions thereunder to indicate that it is completely exclusive, that it is designed to preclude any recovery by proceedings brought in another state received there in the course of an Illinois employment. . . . Only some unmistakable language by a state legislature or judiciary would warrant our accepting such a construction."

This reliance on *McCartin* is misplaced.

As legislatively implemented by 28 U.S.C. §§ 1738-39, the Constitution requires that judicial proceedings and public records "shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken." Accordingly, the relevant question is what is the effect of a judgment or award in the state that entered it, because every other court in the United States must give it that effect. As Chief Justice Marshall put it, "[T]he judgment of a state court should have the same credit, validity and effect, in every other court of the United States, which it had in the state where it was pronounced . . . ." *Hampton* v. *McConnel*, *supra*, 16 U.S. (3 Wheat.) at 235. The correctness of this view has been reaffirmed by numerous decisions over the years. See, *e.g.*, *Durfee* v. *Duke*, 375 U.S. 106 at 109 (1963); *Williams* v. *North Carolina*, 317 U.S. 287 at 294-95 (1942); *Fauntleroy* v. *Lum*, 210 U.S. 230 at 236-37 (1908).

Hence, the relevant issue in *McCartin* was not whether Illinois intended to preclude a further award in Wisconsin. Rather, it was whether the Illinois award precluded a further award in Illinois. And the Court had previously recognized this to be the issue in *Magnolia* when it stated (320 U.S. at 440):

> "But whether the Texas award purported also to adjudicate the rights and duties of the parties under the Louisiana law or to control persons and courts in Louisiana is irrelevant to our present inquiry. For Texas is without power to give extraterritorial effect to its laws. [Citations omitted.] The significant question in this case is whether the full faith and credit clause has deprived Louisiana of the power to deny that *the Texas award has the same binding effect on the parties in Louisiana as it has in Texas.*" (Emphasis added.)

This is not to say that *McCartin* was wrongly decided on its peculiar, indeed unique, facts. It will be recalled that the employer had signed an agreement in Illinois which expressly provided that the Illinois settlement did not affect the employee's rights to file in Wisconsin. In view of this fact, which *McCartin* itself considered "decisive" (330 U.S. at 630), the result in *McCartin* can only be based on the ground the employer had waived any res judicata defenses he might have had in Wisconsin. As the Fourth Circuit put it in *Pettus*, "prosecution of the proceeding in Wisconsin was virtually under stipulations of consent" (587 F.2d at 631).

Consequently, the statement in *McCartin* that one should examine a state's statutes and decisions to determine whether an award is designed to preclude awards in other jurisdictions should be regarded as dictum, thus unnecessary to the decision there. Since that dictum is contrary to 28 U.S.C. §§ 1738-39 and this Court's prior decisions, it should not govern the outcome here.

Instead, the Court should focus directly on the effect that Thomas' Virginia award has in Virginia. As we next show, that award is *final* under Virginia law and sets the maximum recovery that can be had in Virginia. The Virginia award is entitled to be given the same effect in the District of Columbia as it has in Virginia.

B. Under Virginia Law the Award to Thomas Was Final.

1. A Settlement Agreement Approved by the Virginia Industrial Commission Is the Equivalent of a Contested Award.

Thomas argues that the Virginia agreement to provide compensation should not be given res judicata effect because it was an agreement approved by the Virginia Industrial Commission rather than an award following a contest (Pet. Br. 20). He vainly relies on *Carroll* v.

Lanza, 349 U.S. 408 at 410-11 (1955), wherein the employer had simply begun making compensation payments under the laws of the first state, Missouri, without waiting for an award.

Thomas ignores a crucial distinction. There is no indication in *Carroll* that any state agency in Missouri had made any determination as to the employee's right to receive compensation payments. There was, therefore, no record or judicial proceeding entitled to full faith and credit.[22] By contrast, the Virginia Industrial Commission approved the agreement between Thomas and WGL, and an approved agreement has, under Virginia law, all the effect of an award granted by the Commission following a contest.

Under Virginia law, all agreements between an employer and employee with respect to workmen's compensation must be submitted to the Industrial Commission for its approval (Va. Code § 65.1-93 (1968)).[23] Contrary to

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[22] The issue in *Carroll* was whether Arkansas had to apply the Missouri workmen's compensation statute or could apply its own laws. In accord with other cases giving forum states freedom in choice of law questions, the Court held that Arkansas could apply its own law. This issue is not present here.

[23] Va. Code § 65.1-93 (1968) provided:

> "**§ 65.1-93. Agreement as to compensation.**—If after injury or death, the employer and the injured employee or his dependents reach an agreement in regard to compensation or in compromise of a claim for compensation under this Act, a memorandum of the agreement in the form prescribed by the Industrial Commission shall be filed with the Commission for approval, and *if approved, the same shall be binding, and an award of compensation entered upon such agreement shall be for all purposes enforceable by the court's decree* as elsewhere provided in this Act, and if not approved, the same shall be void." (Emphasis added.)

Section 65.1-93 then provided:

> "Such agreement may be approved only when the Commission, or any member thereof, is clearly of the opinion that *the best interests of the employee or his dependents will be served there-*

Thomas' assertion (Pet. Br. 21), this approval was not "largely a ministerial act." Section 65.1-93 expressly directs the Commission to approve the agreement "only when the Commission, or any member thereof, is clearly of the opinion that the best interests of the employee or his dependents will be served thereby . . . ."

Once approved by the Virginia Industrial Commission, a memorandum of agreement "shall be binding, and an award of compensation entered upon such agreement shall be for all purposes enforceable by the court's decree as elsewhere provided in this Act" (*ibid.*). The Act provides that an approved agreement can be enforced in court in the same manner as an award granted after a contest (Va. Code § 65.1-100 (1968)).[24] As this Court

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by; and approval of such agreement shall bind infant or incompetent dependents affected thereby. Any agreement entered into during the pendency of an appeal to the Supreme Court of Appeals shall be effective only with the approval of the Commission as herein provided." (Emphasis added.)

A 1971 Amendment changed the reference to "Supreme Court of Appeals" to "Supreme Court."

[24] This provision stated:

"**§ 65.1-100. Judgment on agreement or award; enforcement of certain fines and decisions.**—Any party in interest may file in the circuit or corporation court of the county or city in which the injury occurred, or if it be in the city of Richmond then in the circuit or law and equity court of such city, *a certified copy of a memorandum of agreement approved by the Commission,* or of an order or decision of the Commission, or of an award of the Commission, unappealed from, or of an award of the Commission affirmed upon appeal, whereupon *the court, or the judge thereof in vacation, shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though such judgment had been rendered in a suit duly heard and determind by the court.* The fines imposed and decisions rendered under §§ 65.1-106, 65.1-107 and 65.1-127, shall be enforceable as provided herein for the enforcement of other decisions, orders or awards of the Commission. If such injury occurred outside the State, then such certified copy of the memorandum of agreement, order, decision or award may be filed in the circuit or corporation court of the county or city wherein the same might be brought as an action at law or suit in equity." (Emphasis added.)

This section was replaced in 1976 with Va. Code § 65.1-100.1, which provides that orders and awards of the Industrial Commission may be enforced the same way as orders of the circuit courts.

has recognized, judicial enforcement in Virginia of approved agreements and compensation awards is "purely ministerial." *Dillard* v. *Virginia Industrial Commission*, 416 U.S. 783 at 786 (1974), citing *Richmond Cedar Works* v. *Harper*, 129 Va. 481, 106 S.E. 516 (1921). Furthermore, an approved agreement can be modified by the Industrial Commission only in the manner that a final award can be modified. *Dillard, supra*, 416 U.S. at 788 n.5, citing *Manchester Bd. & Paper Co.* v. *Parker*, 201 Va. 328, 111 S.E.2d 453 (1959). In short, "an agreement, when approved by the Commission, is binding upon the parties and, in effect, is an award." *Meade* v. *Clinchfield Coal Co.*, 215 Va. 18, 205 S.E.2d 410 at 411 (1974).

Consequently, the suggested distinction between an approved settlement and an award must be disregarded. Under Virginia law, each is entitled to identical effect. In *Harding* v. *Harding*, 198 U.S. 317 (1905), the Court held that, where the first state gave a judicially approved consent decree the effect of a judgment, other states must give that decree full faith and credit. The same rationale applies here, and requires that an agreement approved by the Virginia Industrial Commission be given the same full faith and credit as an award made after a contest.[25]

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[25] Beyond that, the suggested distinction might only encourage employers to contest claims solely so that any award would be entitled to full faith and credit. This would hardly be conducive to efficient management of the workmen's compensation system. An *amicus* brief submitted in *Dillard* estimated that about 95% of all workmen's compensation claims are settled by agreement (416 U.S. at 785 n.2).

2. *The Virginia Award Could Not Have Been Modified to Grant Thomas Additional Compensation for Permanent Total Disability.*

Thomas next asserts that the award of Virginia compensation under the agreement approved by the Virginia Industrial Commission is not final because it could have been modified by the Commission to provide additional compensation. He contends that the District of Columbia award for permanent total disability was not inconsistent with the Virginia award (Pet. Br. 22): "Since the Virginia award is, at most, a resolution of the claimant's rights to temporary total disability benefits, the District's award for permanent total disability is consistent with the Virginia award and constitutes no collateral attack on its validity."

This totally ignores Virginia law. Thomas did not receive an award in Virginia for "temporary total disability"; he received an award under a provision providing compensation for "total incapacity." That provision allowed compensation for "total incapacity," with a weekly maximum of $62 and a total maximum of $24,800 (Va. Code § 65.1-54 (1968), as amended by 1970 Va. Acts, ch. 470):

> **"§ 65.1-54. Compensation for total incapacity.**—When the incapacity for work resulting from the injury is total, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such total incapacity, a weekly compensation equal to sixty per centum of his average weekly wages, but not more than sixty-two dollars nor less than fourteen dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks, nor shall the total amount of all compensation exceed twenty-four thousand eight hundred dollars."

To be sure, another provision of the Act allowed compensation for "total and permanent incapacity," but that

provision granted such compensation pursuant to the terms of the provision under which Thomas received his award, with the same maxima and minima.[26]

In short, Thomas received the maximum amount payable in 1971 under the Virginia workmen's compensation statute for his total disability. The granting to Thomas of additional compensation, such as the District of Columbia has tried to do here, would be beyond the power of the Virginia Industrial Commission. As a matter of Virginia law, Thomas' award is final. As a matter of full faith and credit, the Virginia award must be treated as final in the District of Columbia.

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[26] Va. Code § 65.1-56 (1968), as amended by 1970 Va. Acts, ch. 470, provided in relevant part:

> **"§ 65.1-56. Cases in which incapacity shall be deemed to continue for periods specified in section; compensation.**—In cases included by the following schedule the incapacity in each case shall be deemed to continue for the period specified and the compensation so paid for such injury shall be as specified therein and shall be in lieu of all other compensation:
>
> * * * *
>
> "(18) The loss of both hands, both arms, both feet, both legs or both eyes, or any two thereof, in the same accident, or an injury for all practical purposes resulting in total paralysis as determined by the Commission based on medical evidence, or an injury to the brain resulting in incurable imbecility or insanity, shall constitute total and permanent incapacity to be compensated according to the provisions of § 65.1-54.
>
> * * * *
>
> "The weekly compensation payments referred to in this section shall all be subject to the same limitations as to maxima and minima as set out in § 65.1-54."

In an amendment after Thomas' award, Section 65.1-54 was changed to allow compensation for "total and permanent incapacity" to continue for life without limit (Va. Code § 65.1-54 (1973)).

III

EVEN IF *McCARTIN* IS DEEMED APPLICABLE TO THIS CASE, THE COURT OF APPEALS CORRECTLY HELD THAT THE FULL FAITH AND CREDIT CLAUSE BARS THE GRANTING OF THE DISTRICT OF COLUMBIA AWARD.

Even if one were to apply to this case the language in *McCartin* (quoted above, p. 26) stating that one should determine whether the first state intended to preclude further awards elsewhere, the decision below should still be upheld. The Fourth Circuit correctly interpreted Virginia law as precluding recovery of compensation awards in other jurisdictions.[27]

The literal language of the Virginia Workmen's Compensation Act demonstrates that it was intended to be the sole remedy of an injured employee against his employer.[28] Section 65.1-40 (1968) states: "The rights and remedies herein granted to an employee when he and his employer have accepted the provisions of this Act respectively to pay and accept compensation on account of personal injury or death by accident *shall exclude all other rights and remedies* of such employee, his personal representative, parents, dependents or other next of kin, *at common law or otherwise*, on account of such injury, loss of service or death." (Emphasis added.) In addition,

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[27] It should be borne in mind that the decision below was rendered by a court whose circuit includes Virginia and whose judges are more familiar than other courts of appeals with Virginia law. Moreover, the Virginia Supreme Court in the past has ratified statements by the Fourth Circuit on the exclusivity of Virginia's workmen's compensation law. Accordingly, the Fourth Circuit's interpretation of Virginia law is entitled to considerable deference. See *Butner* v. *United States*, 440 U.S. 48 at 58 (1979); *Bishop* v. *Wood*, 426 U.S. 341 at 345-46 (1976).

[28] Under Va. Code § 65.1-23 (1968), an employee could have exempted himself from coverage of the Act if he had done so before his injury. Thomas did not do so.

Section 65.1-103 provides that an employer subject to the Act must purchase insurance or furnish proof of financial ability to self-insure and that "[w]hile such insurance remains in force he or those conducting his business shall *only be liable* to an employee for personal injury or death by accident *to the extent and in the manner herein specified.*" (Emphasis added.)[29]

Virginia case law fully supports the plain language of the statute. In no case has a recovery in addition to that provided by the Virginia Workmen's Compensation Act been given an employee against his employer.[30] Rather, that Act has been construed to prohibit suits against an employer by an illegally employed minor (*Humphries* v. *Boxley Bros. Co.*, 146 Va. 91, 135 S.E. 890 (1926)), and suits against fellow employees are barred for injuries that occur during the course of employment (*Fetig* v. *Chalkley*, 185 Va. 96, 38 S.E.2d 73 (1946); *Lucas* v. *Biller*, 204 Va. 309, 130 S.E.2d 582 (1963); *Brown* v. *Reed*, 209 Va. 562, 165 S.E.2d 394 (1969)). Further, an injured employee of a subcontractor cannot bring suit against other subcontractors or a contractor engaged in the same business. *Anderson* v. *Thorington Construction Co.*, 201 Va. 266, 110 S.E.2d 396 (1959); *Sykes* v. *Stone & Webster Eng. Corp.*, 186 Va. 116, 41 S.E.2d 469 (1947). See generally *Eighteenth Annual Survey of Developments in Virginia Law: 1972-1973*, 59 Va. L. Rev. 1400 at 1632 (1973).

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[29] Va. Code §§ 65.1-103, 65.1-104 (1968), which have since been amended in ways not relevant here, are set forth *infra* in the appendix.

[30] Under Va. Code § 65.1-106 (1968), an injured employee might sue his employer at common law if the employer failed to purchase workmen's compensation insurance or furnish proof of ability to self-insure, as required by the Act. But even in such a case, acceptance of a workmen's compensation award would bar further suit against the employer, for an employee is entitled to "only one full recovery." *Delp* v. *Berry*, 213 Va. 786, 195 S.E.2d 877 at 879 (1973).

The cases have made it clear that the legislative purpose behind the exclusive remedy provision is to limit an employee's recovery so that the rights of those involved in a business are determined solely by the Virginia statute. In *Fetig* v. *Chalkley*, *supra*, the Virginia Supreme Court emphasized this point in enunciating (38 S.E.2d at 75):

> "The fundamental purpose of the act is to give compensation for accidental injuries within the hazards of the employment. The act does not apply to accidents outside the field of industrial hazards. *Within that field the only remedies of the employee are those prescribed by the Act.* . . .
>
> "It seems clear that it was the legislative intent to make the act exclusive in the industrial field so that, in the event of an industrial accident, *the rights of all those engaged in the business would be governed solely thereby.*" (Emphasis added.)

The Fourth Circuit made the same point in *Doane* v. *E. I. duPont de Nemours & Co.*, 209 F.2d 921 at 926 (1954):

> "The purpose of the Virginia statute as interpreted by its highest court is to *limit the recovery of all persons engaged in the business under consideration to compensation under the act*, and to deny an injured person the right of recovery against any other person unless he be a stranger to the business." (Emphasis added.)

In *Rea* v. *Ford*, 198 Va. 712, 96 S.E.2d 92 at 96 (1957), the Virginia Supreme Court quoted this passage in *Doane* and said: "We agree with that reasoning and conclusion."

This legislative purpose applies with the same force to successive awards granted in other jurisdictions as to common law suits against the employer. The purpose of

having one forum for setting an injured employee's compensation would be significantly undermined if the employee could then seek further relief in other jurisdictions.[31]

No case cited by Thomas (or the Department) is contrary to this conclusion. To the extent that such cases bear on the matter at all, they support the conclusion that the Virginia Act is the exclusive remedy against the employer. *Veale* v. *Norfolk & W. Ry. Co.*, 205 Va. 822, 139 S.E.2d 797 (1965), and *Fauver* v. *Bell*, 192 Va. 518, 65 S.E.2d 575 (1951), merely hold that an injured employee could sue third parties in tort when they were "strangers" to the business. *Griffith* v. *Raven Red Ash Coal Co.*, 179 Va. 790, 20 S.E.2d 530 (1942), held only that an employee could sue his employer in tort in a situation where the Industrial Commission had held that the injury had not come in the course of employment and thus was not compensable under the statute.[32] The court

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[31] It was neither irrational nor particularly unusual for Virginia to intend to preclude further awards in other jurisdictions. The Federal government itself on occasion has adopted compensation statutes that expressly preclude the granting of awards under state workmen's compensation laws: 5 U.S.C. § 8173 (dealing with employees of nonappropriated fund instrumentalities); 42 U.S.C. § 1651(c) (dealing with persons employed at military bases outside the United States). It has also adopted a statute barring a successive award by the Federal government (42 U.S.C. § 1705, discussed in note 15 *supra*).

[32] *Griffith* disposes of the contention that the decision below is somehow inconsistent with *Newport News Shipbuilding & Dry Dock Co.* v. *Director*, 583 F.2d 1273 (4th Cir. 1978), *cert. denied*, 440 U.S. 915 (1979). (Pet. Br. 13; DOL Br. 18-19.) In *Newport News*, the Virginia Industrial Commission held that the evidence had not established a causal relationship between employment and an employee's disease. The employee then filed a claim under the Longshoremen's and Harbor Workers' Compensation Act, which has a different standard for determining causality, and was granted compensation. The Fourth Circuit held in reliance on *Griffith* that a decision that an employee's injury was not within the scope of the Virginia Workmen's Compensation Act did not bar the employee

said (20 S.E.2d at 534): "Our conclusion is that the Workmen's Compensation Act is exclusive in so far as it covers the field of industrial accidents, but no farther." Since the injury to Thomas is within the scope of the Virginia statute, it is exclusive as to him.

Moreover, contrary to the claim of Thomas, the Fourth Circuit's construction is not undercut by the fact that in limited instances Virginia law would allow compensation under its statute following the grant of compensation in another jurisdiction. Where an injury occurs outside the state, Virginia might allow an award under its own law for an injury that would have been compensable if it had occurred in Virginia if (1) "[t]he contract of employment was made in this State," (2) "[t]he employer's place of business is in this State," and (3) "[t]he residence of the employee is in this State" (Va. Code § 65.1-61 (1968)).[33] Such an award is subject to the

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from seeking some other form of relief. In contrast, Thomas was granted an award under the Virginia Act and, as the cases discussed in the text make it clear, that statute is exclusive remedy for injuries within its ambit.

Biggs v. *Norfolk Dredging Co.*, 360 F.2d 360 (4th Cir. 1966), the other Fourth Circuit case cited (Pet. Br. 12), did not consider the issue of whether the Virginia Workmen's Compensation Act constituted an employee's exclusive remedy.

[33] In full, Va. Code § 65.1-61 (1968) provided:

> "§ 65.1-61. **Foreign injuries.**—When an accident happens while the employee is employed elsewhere than in this State which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if:
>
> (1) The contract of employment was made in this State;
> (2) The employer's place of business is in the State; and
> (3) The residence of the employee is in this State;
>
> "Provided the contract of employment was not expressly for service exclusively outside of the State.
>
> "But if an employee shall receive compensation or damages under the laws of any other state, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Act."

A 1976 amendment deleted subdivision (3).

condition that the employee's total compensation cannot exceed that allowed by Virginia: "But if an employee shall receive compensation or damages under the laws of any other state, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Act" (*ibid.*).

This provision does not affect Thomas, because his injury occurred in Virginia. Instead, it is claimed that this provision reflects upon the intent of the Virginia legislature—that it shows Virginia could not have intended to bar other jurisdictions from granting successive awards when it allowed itself to do so (Pet. Br. 16; see also DOL Br. 15-16).

But this provision persuasively supports the Fourth Circuit's conclusion that Virginia intended its award in this case to be exclusive. The provision allows that, in those instances where Virginia has significant interest in the employment relationship, it will bring an employee's compensation up to the level allowed by Virginia law—if consistent with full faith and credit.

The fact that the provision does not allow the employee's total compensation from all jurisdictions to exceed that permitted by the Virginia statute shows that the legislature intended—clearly intended—that employers' maximum obligations would be determined by that statute. See *Gasch* v. *Britton*, 202 F.2d 356, at 360-61 (D.C. Cir. 1953) (adopting this rationale in similar circumstances), cited in *Pettus* v. *American Airlines*, *supra* (587 F.2d at 631). Here, Thomas received the maximum permitted under Virginia law.

Thomas (Pet. Br. 16-17; see also DOL Br. 15) tries to make much of this Court's statement in *Magnolia* (320 U.S. at 443): "We have no occasion to consider what effect would be required to be given to the Texas award

if the Texas courts held that an award of compensation in another state would not bar an award in Texas . . . ." He claims that, because the Virginia statute would in some instances allow an award where another jurisdiction had earlier granted one, *Magnolia* is not on point. But the Court's caveat as to what it was *not* deciding cannot be elevated into a "rationale" (Pet. Br. 16) for what it was deciding.

Here, Thomas postures two reasons why Virginia's willingness to grant a successive award is significant. The first is that it shows that Virginia does not intend to bar another jurisdiction granting an award after Virginia. But, as we have just seen, this is not so. The second reason apparently is that *McCartin* so limited *Magnolia* that any factual distinction between this case and *Magnolia* is significant. But, as shown above, pp. 26-28, *McCartin* rather than *Magnolia*, should be limited to its facts.

IV

THOMAS' ONE CAUSE OF ACTION FOR COMPENSATION IS INCLUDED WITHIN THE MANDATE OF THE FULL FAITH AND CREDIT CLAUSE.

Thomas claims—as indeed he must—that he had two causes of action, one under the Virginia statute and one under the District of Columbia statute. The only reason given for this contention is that the Virginia Industrial Commission will only apply the Virginia statute (Pet. Br. 18).[34] This contention is without merit.

To begin with, *Magnolia* explicitly rejected a suggestion that the Texas and Louisiana statutes formed the basis for two separate causes of action (320 U.S. at 443-44):

[34] While not putting the matter in terms of causes of action, the Department of Labor presents various arguments in favor of allowing successive awards (DOL Br. 22-30).

> "Respondent's injury in Texas *did not give rise to two causes of action* merely because recovery in each state is under a different statute, or because each affords a different measure of recovery. . . . The grounds of recovery are the same in one state as in the other—the injury to the employee in the course of his employment. The whole tendency of our decisions under the full faith and credit clause is to require a plaintiff to try his whole cause of action and his *whole case at one time*." (Emphasis added.)

Here as well, Thomas' ground for recovery under both the Virginia statute and the District of Columbia statute is his back injury.[35] The same evidence would have sustained a claim under either statute: one jackhammer, one back, one injury. Inescapably, there is only one cause of action. *Restatement of Judgments*, § 61 (1942).

Moreover, any attempt to avoid *Magnolia* on the ground that the Virginia Industrial Commission could not try Thomas' claim under District of Columbia law must fail. Virginia has not given its Industrial Commission the authority to try workmen's compensation claims under the laws of other jurisdictions, but there is no constitutional reason why Virginia could not have allowed the Commission to try such claims.[36] In effect, Virginia has determined as a matter of choice to apply its own work-

[35] Compare Va. Code § 65.1-7 (1968) ("Unless the context otherwise requires, 'injury' and 'personal injury' mean only injury by accident . . . arising out of and in the course of the employment . . .") with 33 U.S.C. § 902(2) ("The term 'injury' means accidental injury or death arising out of and in the course of employment . . . ."). Thus, under both statutes the central prerequisite for compensation is injury by accident in the course of employment.

[36] See *Crider* v. *Zurich Ins. Co.*, 380 U.S. 39 (1965), where the Court held that Alabama could entertain a suit in its courts by one of its residents injured in the state under the Georgia workmen's compensation statute, even though that statute provided that claims under it could only be heard by a Georgia administrative agency.

men's compensation law, rather than some other jurisdiction's law, to claims brought before the Virginia Industrial Commission.[37]

Thomas' position for present purposes is no different from that of a plaintiff in a tort, wrongful death, or contract action. Clearly, a plaintiff who has brought to judgment a tort or contract action cannot bring a successive suit on the same claim in another jurisdiction on the ground that the plaintiff might gain the benefit of a more favorable law in the other jurisdiction. "A judgment in tort or contract is not immune from the requirement of full faith and credit because the successful plaintiff could have maintained his suit under the law of other states and have secured a larger recovery in some . . ." (*Magnolia Petroleum Co.* v. *Hunt*, 320 U.S. at 445). Nor can a plaintiff in a wrongful death action who sues successfully in a state that applies a wrongful death statute containing a limit on damages then successfully bring an action in another jurisdiction that will apply a law without such a limit (*Semler* v. *Psychiatric Institute*, 575 F.2d 922 (D.C. Cir. 1978)).

There is certainly no basis for distinguishing workmen's compensation awards from judgments in tort or contract actions on the ground of policy. It is doubtful

[37] Virginia's decision to apply its Workmen's Compensation Act is a reasonable one: "*Prima facie* every state is entitled to enforce in its own courts its own statutes, lawfully enacted." *Alaska Packers Association* v. *Industrial Accident Comm'n*, 294 U.S. 532 at 547 (1935). Certainly, as the state where the injury occurred, Virginia had a sufficient interest here to apply its own law to Thomas' claim. *Carroll* v. *Lanza*, 349 U.S. 408 (1955); *Pacific Employers Ins. Co.* v. *Industrial Accident Comm'n*, 306 U.S. 493 (1939). The situation here is like that in *Pacific Employers Ins. Co., supra*, where it was said (306 U.S. at 500): "While in the circumstances now presented, either state, if its system for administering workmen's compensation permitted, would be free to adopt and enforce the remedy provided by the statute of the other, here each has provided for itself an exclusive remedy for a liability which it was constitutionally authorized to impose."

at best to claim that the District of Columbia has a greater interest in compensating injured workmen than in seeing that persons injured by torts or breach of contract are compensated.[38]

Beyond that, this Court has often held the Full Faith and Credit Clause overrides considerations of local policy. Four examples suffice: *Yarborough* v. *Yarborough*, 290 U.S. 202 (1933), held that South Carolina must honor a Georgia judgment limiting a father's support obligations to his daughter, even though the daughter lived in South Carolina. *Fauntleroy* v. *Lum*, 210 U.S. 230 (1908), held that Mississippi must enforce a Missouri judgment based on a contract made in Mississippi, despite the fact that the contract constituted illegal gambling in Mississippi. *Durfee* v. *Duke*, 375 U.S. 106 (1963), held that Missouri courts must honor a decision on title rendered in Nebraska, even though the land in question was allegedly in Missouri. And *Christmas* v. *Russell*, 72 U.S. (5 Wall.) 290 (1866), held that Mississippi must enforce a judgment entered elsewhere against one of its residents, even though the underlying action would have been barred by the statute of limitations in Mississippi.[39]

In short, the Full Faith and Credit Clause has long been held to override policy considerations at least as

[38] In any event, an approach that only considers the District of Columbia's policy interest in this case overlooks Virginia's policy. The limitations may well represent a considered judgment that, in return for giving up its common law defenses to employee claims, there should be a limit on the amount of an employer's liability for compensation; a successive District of Columbia award would undercut this policy. We are at a loss to understand the suggestion that Virginia's policy may constitute a mere attempt to lure business to the state (DOL Br. 25 n.17).

[39] To the same effect, see *Union National Bank* v. *Lamb*, 337 U.S. 38 (1949); *Morris* v. *Jones*, 329 U.S. 545 (1947); *Titus* v. *Wallick*, 306 U.S. 282 (1939); *Milwaukee County* v. *M. E. White Co.*, 296 U.S. 268 (1935); and *Kenney* v. *Supreme Lodge*, 252 U.S. 411 (1920).

substantial as those of the District of Columbia in compensating Thomas, and policy furnishes no basis for Thomas to evade a defense based on that clause. The Court rejected similar policy arguments in *Magnolia* (320 U.S. at 440-41), and was right to do so. The prevailing of the Full Faith and Credit Clause over local policies "is part of the price of our federal system." *Williams* v. *North Carolina*, 317 U.S. 287 at 302 (1942).

It is also suggested that workmen's compensation claims should be distinguished from tort or contract actions because, while a court in a tort or contract action can hear and decide choice of law issues, an industrial commission in a workmen's compensation case has its governing law fixed by statute (DOL Br. 27-28). This argument, too, must fail.

First, there is no constitutional requirement that a court in the forum state "vindicate" (see DOL Br. 28) the interests of other states through choice of law. The forum state need not consider the interests of other states at all. It may apply its own law to a case so long as its own interests in the case are not "too slight" or "too casual" (*Clay* v. *Sun Ins. Office, Ltd.*, 377 U.S. 179 at 182 (1964)).[40]

Nor does the opportunity to litigate choice of law questions furnish a basis for distinguishing workmen's com-

[40] The claim in the Department of Labor's brief (DOL Br. 27-28) that choice of law provides an opportunity to vindicate the interests of nonforum states apparently assumes that choice of law will be by "interest analysis." But in fact states are free to use other choice of law methods, like the place of wrong in tort cases, that do not weigh at all the interests of concerned states. See *Wells* v. *Simonds Abrasive Co.*, 345 U.S. 514 at 516 (1953), quoted at p. 22 *supra*. In this regard, see *Carroll* v. *Lanza*, 349 U.S. 408 (1955), where a federal court in Arkansas, the state where the injury occurred, was allowed to apply Arkansas law to a claim by an injured worker even though the worker resided in Missouri and had made his employment contract in Missouri. Surely, Missouri's interests, which were weightier than Arkansas', were not "vindicated" by this choice.

pensation awards from tort or contract actions when viewed from the standpoint of the parties. To begin with, a court's choice of law rules are frequently settled by prior precedents; the choice may even be fixed by statute (see Uniform Commercial Code § 1-105). In these cases, a plaintiff's right to litigate over choice of the governing law is likely to be meaningless. Beyond that, it would appear that, if any plaintiff should be entitled to relitigate a claim in another jurisdiction, it is a plaintiff who unsuccessfully litigates a choice of law question. Such a plaintiff might have chosen the first forum in the belief that it would have chosen a more favorable law than that it did apply. By contrast, a workmen's compensation claimant knows precisely what law an industrial commission will apply. Such a claimant cannot reasonably claim surprise at the choice of governing law.

Finally, it is claimed that workmen's compensation awards should be treated differently from judgments in tort or contract because otherwise there will be "an unfortunate opportunity for employers to engage in overreaching" by inducing employees to agree to compensation in the least advantageous forum (DOL Br. 29). But surely the state that issued the award is fully competent to deal with instances of employer misconduct. For example, Virginia would allow awards to be vacated on the grounds of "fraud, imposition and mistake" when applications to vacate are "seasonably made" (*Harris* v. *Diamond Const. Co.*, 184 Va. 711, 36 S.E.2d 573 at 577, 578 (1946)). Thomas has never sought to vacate his Virginia award on any of these grounds.

Consequently, the possibility of misconduct by a few employers or employees furnishes no basis for establishing a special exception to the general rule that full faith and credit must be given. This Court long ago refused to carve out such an exception when it was alleged that a judgment had been secured by fraud (*Christmas* v.

Russell, 72 U.S. (5 Wall.) 290 (1866)),[41] and there is even less reason to do so here, where it is only intimated that misconduct *might* occur.[42]

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[41] In *Christmas*, the Court held that a state could not refuse enforcement of another state's judgment on the ground of fraud in securing the judgment if the judgment could not be collaterally attacked on that ground in the judgment state.

[42] In stark contrast to the straightforward thrust of his brief and argument, Thomas adopts a florid tone in his Conclusion (Pet. Br. 22-24). The essence of his disputation is the unsupported allegation that "His employer, The Washington Gas Light Company, was a corporation doing business in the District of Columbia. Recognizing the obvious advantage in the Virginia Act, the employer seized on the fortuity of the injury occurring in Virginia and directed its employee to that forum to seek compensation."

The Department of Labor has filed a brief as "Federal Respondent." Conceding that workmen's compensation must be treated "within statutory limitations" (DOL Br. 22) and that workmen's compensation must be handled quickly (DOL Br. 10), the Department nevertheless creates an unfair atmosphere for the consideration of the Thomas case. At the end of its brief (DOL Br. 29), the unsupported allegation is made that an injured employee "often" is in no position to make an "informed choice" because he lacks knowledge and being motivated by a need for quick money is "likely" to accept any "reasonable offer." On the other hand, an employer, being generally aware of the laws involved, "may be motivated to steer the employee toward an award in a less favorable jurisdiction" and thereby "overreach." (DOL Br. 29-39).

These suggestions must stand corrected.

WGL is incorporated in both Virginia and the District of Columbia. It engages in the purchase, distribution, and sale of natural gas at retail in the Washington metropolitan area, which includes the District of Columbia and adjoining areas of Virginia and Maryland, and it has employees working in all three jurisdictions. Through several wholly owned subsidiaries, it conducts other operations in West Virginia, Louisiana and Oklahoma. Because of the nature of its business, WGL may be fairly classified as a "regulated company in a regulated industry." Its rates are subject to the regulatory agencies of three jurisdictions and to certain regulation by several federal agencies. It uses a Uniform System of Accounts. It adheres to the regulations of the Securities and Exchange Commission and related regulations of Virginia and the District of Columbia. It pays its taxes. As an employer, its December 1978 list of retirees included 430 employees each with over 30 years of service.

In closing, it should be observed that this case has ramifications running far beyond its facts. The Benefits Review Board has been granting awards under the District of Columbia workmen's compensation law to employees whose connections with the District of Columbia are tenuous at best. For instance, in *Director* v. *National*

First chartered in 1848, WGL has paid dividends on common stock for each of the last 128 years. Its longevity is due in large part to meticulous attention to government regulations and statutory enactments.

Insofar as the case at bar is concerned, the relevant facts are these: WGL maintains its Operations Center in Springfield, Virginia, and Thomas was working out of that Center. When Thomas was injured in Arlington, Virginia. Virginia law clearly applied; on their face, the laws of the District of Columbia did not. (Note that even claims under the LHWCA are required to be filed in the district where the injury occurred; 33 U.S.C. § 913(a)). It was obvious that the matter be handled in Virginia. (Incidentally, in 1971, the weekly compensation payments available to Thomas were $62 in Virginia and $70 in the District of Columbia (see note 13 *supra*).

The claim of Thomas was properly handled by WGL and by the Virginia Industrial Commission. If Thomas believes otherwise, an action will lie in Virginia. Notwithstanding these remedies, and for whatever motive, he instituted legal proceedings in the District of Columbia and has been advised by the Court of Appeals that his action will not lie. The law is contrary to his claim.

Insofar as the statement of the Department of Labor can be said to reflect the facts of this case, the above-described remedies are clearly sufficient. A more broad import for those statements (as to employers in general) calls into question the role of the Department of Labor as administrator of the LHWCA. The nature of the broad situation which is suggested by that Department must have been apparent since the decision of this Court in *Magnolia*, some thirty-five years ago. Legislation could have been sought to require that employees be informed of alternative remedies. An absence of such legislative effort suggests that others were satisfied with the viability of the remedies such as Virginia provides for vacating awards on the grounds of fraud, imposition, or mistake.

Now, Thomas—aided by the Department of Labor—is before this Court. That is his right. But in the exercise of this right, neither he nor anyone else is entitled to becloud Washington Gas Light Company by innuendo or carefully turned phrases.

Van Lines, Inc., —— F.2d —— (No. 78-1259; D.C. Cir., Nov. 13, 1979), the Board granted compensation to a truck driver who resided in Virginia, was employed by a company that was located in Virginia, and was injured in New York. The only District of Columbia contact was the fact that the employee had regularly driven in the District of Columbia prior to his injury.[43]

The granting of compensation under District of Columbia law on the basis of such minimal contacts means that there are an untold number of employees who have previously received full compensation under the laws of other jurisdictions who would now be eligible for compensation under the District of Columbia law, if this Court should reverse the Fourth Circuit. Under the Benefits Review Board's interpretation of the LHWCA's statute of limitations, discussed above, pp. 13-16, these claims would never be untimely so long as the employer for any reason fails to file reports with the Department of Labor. Claims that employers might rightfully and reasonably have considered settled might be raised years later, perhaps even 30 years later.

This public interest in finality is one of the basic purposes behind the Full Faith and Credit Clause. As stated in *Riley* v. *New York Trust Co.*, 315 U.S. 343 at 348-49 (1942): "This clause of the Constitution brings to our Union a useful means for ending litigation. Matters once decided between adverse parties in any state or territory are at rest."

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[43] See also *Director* v. *Boughman*, 545 F.2d 210 (D.C. Cir. 1976), where the Board granted an award under the District of Columbia statute to the family of a union representative who resided in California, was killed in California, and was directed in his work by a regional officer for the western United States. His only contacts with the District of Columbia were that the union's headquarters were there, payroll checks were issued from there, by inference it was the place of the employment contract, and the employee occasionally went there on business. (These facts do not appear in the *Boughman* case, but are related in *Director* v. *National Van Lines*, *supra*, slip. op. at 16-17.)

Virginia determined matters between Thomas and WGL, and the Constitution mandates that such determination be respected by every other jurisdiction. If Virginia's resolution of the matter were to appear inadequate, perhaps legislation could be contemplated. The Social Security Act might be amended to cover certain injuries, or new federal legislation might replace state compensation programs with a federal workmen's compensation law or set minimum federal standards for state programs.[44] The need for such laws must be determined by Congress. In the meantime, however, the existing law on full faith and credit should not be distorted by disregarding the plain teachings of *Magnolia* in a misconceived attempt, on the facts of this case, to ameliorate purported shortcomings in Virginia's Workmen's Compensation Act.

CONCLUSION

Wherefore, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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February 21, 1980

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[44] Legislation has been introduced that set as federal minima for state programs the "essential recommendations" in a 1972 report of the National Commission on State Workmen's Compensation Laws. See, *e.g.*, S. 420, 96th Cong., 1st Sess. (1979). One such recommendation is that there be no limit on compensation for total disability.

APPENDIX

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United States Constitution, Article IV, Section 1:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof."

28 U.S.C. § 1738:

> "The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> "The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> "Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

28 U.S.C. § 1739:

> "All nonjudicial records or books kept in any public office of any State, Territory or Possession of the United States, or copies thereof, shall be proved or admitted in any court or office in any other State, Territory, or Possession by the attestation of the

custodian of such records or books, and the seal of his office annexed, if there be a seal, together with a certificate of a judge of a court of record of the county, parish, or district in which such office may be kept, or of the Governor, or secretary of state, the chancellor or keeper of the great seal, of the State, Territory, or Possession that the said attestation is in due form and by the proper officers.

"If the certificate is given by a judge, it shall be further authenticated by the clerk or prothonotary of the court, who shall certify, under his hand and the seal of his office, that such judge is duly commissioned and qualified; or, if given by such Governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the State, Territory, or Possession in which it is made.

"Such records or books, or copies thereof, so authenticated, shall have the same full faith and credit in every court and office within the United States and its Territories and Possessions as they have by law or usage in the courts or offices of the State, Territory, or Possession from which they are taken."

33 U.S.C. § 913(a):

"(a) Except as otherwise provided in this section, the right to compensation for disability or death under this chapter shall be barred unless a claim therefore is filed within one year after the injury or death. If payment of compensation has been made without an award on account of such injury or death, a claim may be filed within one year after the date of the last payment. Such claim shall be filed with the deputy commissioner in the compensation district in which such injury or death occurred. The time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment."

33 U.S.C. § 930(f):

"(f) Where the employer or the carrier has been given notice, or the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier has knowledge, of any injury or death of an employee and fails, neglects, or refuses to file report thereof as required by the provisions of subdivision (a) of this section, the limitations in subdivision (a) of section 913 of this title shall not begin to run against the claim of the injured employee or his dependents entitled to compensation, or in favor of either the employer or the carrier, until such report shall have been furnished as required by the provisions of subdivision (a) of this section."

Act of March 4, 1927, ch. 509, § 3(a), 44 Stat. 1426 (codified at 33 U.S.C. § 903(a) (1970)):

"Compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law."

D.C. Code § 36-501 (1973):

"The provisions of chapter 18 of title 33, U.S. Code, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irres-

pective of the place where the injury or death occurs; except that in applying such provisions the term 'employer' shall be held to mean every person carrying on any employment in the District of Columbia, and the term 'employee' shall be held to mean every employee of any such person."

Va. Code § 65.1-40 (1968):

"§ 65.1-40. **Employee's rights under Act exclude all others.**—The rights and remedies herein granted to an employee when he and his employer have accepted the provisions of this Act respectively to pay and accept compensation on account of personal injury or death by accident shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin, at common law or otherwise, on account of such injury, loss of service or death."

Va. Code § 65.1-54 (1968), as amended by 1970 Va. Acts, ch. 470:

"§ 65.1-54. **Compensation for total incapacity.**—When the incapacity for work resulting from the injury is total, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such total incapacity, a weekly compensation equal to sixty per centum of his average weekly wages, but not more than sixty-two dollars nor less than fourteen dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks, nor shall the total amount of all compensation exceed twenty-four thousand eight hundred dollars."

Va. Code § 65.1-61 (1968):

"§ 65.1-61. **Foreign injuries.**—When an accident happens while the employee is employed elsewhere

than in this State which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if:

(1) The contract of employment was made in this State;

(2) The employer's place of business is in this State; and

(3) The residence of the employee is in this State;

Provided the contract of employment was not expressly for service exclusively outside of the State.

"But if an employee shall receive compensation or damages under the laws of any other state, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Act."

Va. Code § 65.1-93 (1968):

"§ 65.1-93. **Agreement as to compensation.**—If after injury or death, the employer and the injured employee or his dependents reach an agreement in regard to compensation or in compromise of a claim for compensation under this Act, a memorandum of the agreement in the form prescribed by the Industrial Commission shall be filed with the Commission for approval, and if approved, the same shall be binding, and an award of compensation entered upon such agreement shall be for all purposes enforceable by the court's decree as elsewhere provided in this Act, and if not approved, the same shall be void. Such agreement may be approved only when the Commission, or any member thereof, is clearly of the opinion that the best interests of the employee or his dependents will be served thereby; and approval of such agreement shall bind infant or incompetent de-

pendents affected hereby. Any agreement entered into during the pendency of an appeal to the Supreme Court of Appeals shall be effective only with the approval of the Commission as herein provided."

Va. Code § 65.1-100 (1968):

"§ 65.1-100. **Judgment on agreement or award; enforcement of certain fines and decisions.**—Any party in interest may file in the circuit or corporation court of the county or city in which the injury occurred, or if it be in the city of Richmond then in the circuit or law and equity court of such city, a certified copy of a memorandum of agreement approved by the Commission, or of an order or decision of the Commission, or of an award of the Commission unappealed from, or of an award of the Commission affirmed upon appeal, whereupon the court, or the judge thereof in vacation, shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though such judgment had been rendered in a suit duly heard and determined by the court. The fines imposed and decisions rendered under §§ 65.1-106, 65.1-107 and 65.1-127, shall be enforceable as provided herein for the enforcement of other decisions, orders or awards of the Commission. If such injury occurred outside the State, then such certified copy of the memorandum of agreement, order, decision or award may be filed in the circuit or corporation court of the county or city wherein the same might be brought as an action at law or suit in equity."

Va. Code § 65.1-103 (1968):

"§ 65.1-103. **Duty to insure payment of compensation; effect of insurance.**—Every employer subject

to the compensation provisions of this Act shall insure the payment of compensation to his employees in the manner hereinafter provided. While such insurance remains in force he or those conducting his business shall only be liable to an employee for personal injury or death by accident to the extent and in the manner herein specified."

Va. Code § 65.1-104 (1968):

"§ 65.1-104. **Insurance or proof of financial ability to pay required.**—Every employer subject to this Act shall insure and keep insured his liability thereunder in some corporation, association or organization or State insurance fund authorized to transact the business of workmen's compensation insurance in this State or in some mutual insurance association formed by a group of employers so authorized, or shall furnish to the Industrial Commission satisfactory proof of his financial ability to pay direct the compensation in the amount and manner and when due as provided for in this Act. In the latter case the Commission may in its discretion require the deposit of an acceptable security, indemnity or bond to secure the payment of compensation liabilities as they are incurred. The State Treasurer shall be the custodian of the securities deposited by the employers under the requirements of this section, and for such services he shall receive a compensation of one twentieth of one per centum per annum of the amount of securities deposited with him, payable by the employer.

"It shall be satisfactory proof of the employer's financial ability to pay direct the compensation in the amount and manner when due, as provided for in this Act, and acceptable security, indemnity or bond to secure the payment of compensation liabili-

ties as they are incurred, if the employer shall show to the Industrial Commission that he is a member of an association or group of employers and as such is exchanging contracts of insurance with the employers of this and other states, through a medium as specified and located in their agreements between each other, and shall further file with the Industrial Commission a certificate of authority issued by the insurance department of any state to such group of employers or association, together with a sworn finanical statement showing the group of employers or association to be in solvent condition. But this paragraph shall in no wise restrict or qualify the right of self-insurance as hereinbefore authorized."